

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION

JOHN WESTON OSBURN,

No. C 12-3397 RS

Plaintiff,

**ORDER ADOPTING REPORT AND  
RECOMMENDATION OF DISMISSAL**

v.

OAKLAND POLICE OFFICERS, et al.,

Defendant.

The United States Magistrate Judge to whom this action was initially assigned issued a report and recommendation that the matter be dismissed for failure to prosecute. *See* Dkt. 8. Specifically, on March 20, 2013, the Judge noted:

On October 1, 2012, the Court vacated the Case Management Conference in this case and ordered Plaintiff John Weston Osburn to file a status report. Dkt. No. 3. As he failed to respond, the Court ordered Plaintiff to show cause why this case should not be dismissed for failure to prosecute and failure to comply with court deadlines. Dkt. No. 4. In response, Plaintiff's counsel filed a declaration stating that "the agreement for settlement had already been reached when the case was filed—there having been an earlier version brought in the Alameda County Superior Court, which had to be superseded because of a time problem—and so I had essentially moved it to the "done" column, carried in my head; not an adequate mode for keeping track, I admit." Dkt. No. 5. Based on this response, the Court discharged the order to show cause and ordered Plaintiff to file a dismissal or status report by February 14, 2013. Dkt. No. 6. However, Plaintiff again failed to comply with the Court's order.

On March 5, 2013, the Court issued a second order to show cause. Dkt. No. 7. The Court ordered Plaintiff's counsel, Dennis Cunningham, to provide his client, John Weston Osburn, with (1) a copy of the second order to show cause, (2) the January 3, 2013 Order to Show Cause, and (3) Mr. Cunningham's January

17 declaration in response. *Id.* The Court further ordered Plaintiff to file a declaration by March 15, 2013, attesting that he received copies of these documents. *Id.* Finally, the Court ordered Plaintiff to show cause by March 15, 2013 why this case should not be dismissed for repeatedly failing to comply with court orders. *Id.* The Court warned Plaintiff that it may dismiss the case without a hearing if no responsive declaration is filed, and that it was imperative that Plaintiff file a written response by March 15. Plaintiff has failed to comply.

Dkt. 8. Based on this procedural history, the judge therefore recommended that this matter be dismissed pursuant to Fed. R. Civ. Proc. 41(b) for failure to prosecute. No party has filed objections. The report and recommendation is hereby adopted and incorporated in full, and the case is dismissed. The Clerk is directed to close the case file.

IT IS SO ORDERED.

Dated: 4/8/13



RICHARD SEEBORG  
UNITED STATES DISTRICT JUDGE